

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANDREA FITZSIMMONS,

Plaintiff,

v.

CV No. 20-226 GJF/CG

STEWART INDUSTRIES
INTERNATIONAL ROSWELL, LLC.,

Defendant.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court on review of the record. Plaintiff filed her Complaint on March 12, 2020, seeking civil enforcement of an administrative action pursuant to 49 U.S.C. § 4121(B)(6)(A) and 29 C.F.R. § 1979.113. (Doc. 1 at 1-2). Under Federal Rule of Civil Procedure 4, a plaintiff must serve a summons to the defendant “on or after filing the complaint.” Furthermore, under Rule 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”

Here, Plaintiff filed her Complaint on March 12, 2020. The 90-day period for service of the summons and Complaint will therefore lapse on June 12, 2020. The record is void of any evidence that Plaintiff has either attempted, or successfully, served Defendant. The Court is aware that Plaintiff is seeking civil enforcement of a prior administrative decision, but Plaintiff must still abide by the Federal Rules of Civil Procedure when seeking relief in federal court. In addition, Plaintiff’s Complaint cannot

serve as a motion for relief against Defendant, who has not been served or given an opportunity to respond.

IT IS THEREFORE ORDERED that, on or before **June 15, 2020**, Plaintiff shall either: (1) file a notice with the Court stating why this case should not be dismissed for failure to prosecute with an explanation on why her action is not subject to Rule 4; (2) serve Defendant pursuant to Rule 4; or (3) file a motion in accordance with the Federal Rules. Failure to timely comply may result in dismissal of this action without further notice.

IT IS SO ORDERED.



THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE